IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. CRIMINAL APPEAL NO. 212/2003
(RAMCHANDRA & ANR. VS STATE)

J U D G M E N T

APPEAL UNDER SECTION 374(2) Cr.P.C. AGAINST THE JUDGMENT DATED 24.01.2002 PASSED BY THE LEARNED ADDITIONAL SESSIONS JUDGE (FAST TRACK) TEHSIL ANUPGARH IN SESSIONS CASE NO. 51/2001

DATE OF JUDGMENT : 18th July, 2007

HON'BLE MR. BHAGWATI PRASAD, J.
HON'BLE MR. RAGHUVENDRA S. RATHORE, J.

Mr. Varun Goyal for the appellants.
Mr. JPS Choudhary, P.P.

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BY THE COURT :

Heard the learned counsel for the parties.

This appeal has been filed by the accused appellants against the decision of Additional Sessions Judge (Fast Track) Anupgarh in Criminal Original Case No. 51/01 dated 24.01.2002.

The prosecution was initiated on the basis of the First Information Report at Police Station, Anupgarh by Om Prakash on 13.07.99 at about 1.20 P.M. According to the First Information Report, Om Prakash informed the police that his brother Kishna Ram, his wife and three daughter are lying dead in their house. A goat is also lying dead. On the basis of the information, F.I.R. No. 353/99 under Section 302, 460 and 429

IPC was registered. The case was instituated against unknown accused as no eye witness was available. The police proceeded to investigate the case. After investigation, charge-sheet was filed against the accused persons under Section 302, 460, 429, 380 and 376(2)(g) IPC. The matter was laid out to the court of Sessions from where the case was committed to the trial court for trial. At the trial, charged were framed against the accused under Section 302/34, 302, 460, 380 and 376(2)(g) IPC. The accused denied the charges and claimed trial.

At the trial, the prosecution examined 18 witnesses. The accused persons were examined under Section 313 Cr.P.C. No defence witnesses were produced. The trial court after considering the case of the prosecution came to the conclusion that the circumstances made out against the accused persons are enough to connect them with the crime and thus, convicted the accused appellant for the following offences and sentenced them as under :-

OFFENCES	PUNISHMENT
Section 302 & 302/34 IPC	Life imprisonment
Section 376 IPC	Life imprisonment and a fine of Rs. 1000/- each
Section 460 IPC	Life imprisonment and a fine of Rs.1000/- each
Section 380 IPC	Five years imprisonment and a fine of Rs300/- each
Section 429 IPC	Two years imprisonment and a fine of Rs.100/- each

Learned counsel for the appellants arguing the case of the accused persons stressed that the first circumstance held proved against the accused persons is in the nature of a cart which is alleged to have been used in the commission of crime. The recovery of cart according to the learned counsel is such an innocuous circumstance that it hardly has any connection

with the crime and therefore, merely by a borrowed cart recovered from the accused, it cannot be said that the offence as alleged is made out against the accused persons and in that light, according to the learned counsel, the trial court has committed an error in accepting this as a circumstance connecting the accused with the crime because there was no incriminating article connected with the cart. Another circumstance which has been found to be held proved against the accused persons is the recovery of two ladies watches from the person of the accused. Learned trial court though has noticed that the witnesses of recovery are not consistent as to how the recoveries of watches were made but then, the learned trial court has proceeded to observe that the recovery of watches is held proved from the accused and according to the trial court, one Atlas watch has been recovered from Ramchandra and from Nanu Ram, a Soni watch has been record. According to the trial court, the identification of the watches was conducted by the learned Magistrate and there the witnesses PW/3 Om Prakash in his statement has said that he has identified one watch whereas, the case was that there were two watches. The court statement of this witness PW/3 Om Prakash being to the effect that only one watch was identified goes to show that the identification memo prepared for identification of the watches Ex.P/92, Ex.P/92A and P/93 is of the identification of only one watch recovered from accused Nanu Ram. Thus, the trial court has fallen in error in believing the recovery of watch from each accused. Further, the witness has not stated in his statement that similar watches were mixed with it. In the cross-examination, witness

PW/15 Bharat Bhushan has stated that he has not cared to look into whether the watches are of same company or not. It is the reader who is alleged to have brought the watches for mixing. Any identification which is made in such circumstance cannot be considered to be of conclusive nature and therefore, the identification of the watches has wrongly be held proved against the accused by the trial court.

Then comes another circumstances i.e. recovery of goats. According to the prosecution case, these goats were taken by Kishna Ram 15 days before for milk. Curiously, witness Om Prakash has stated that Kishna Ram had a buffalo, then the very purpose for which the goats were taken by Kishna Ram from Charan Singh falls to the ground. In any case, recovery of these goats were not made from the accused. They were recovered from herd of goats and were not in the possession of the accused. When the accused were not to keep the goats in their possession and left it with the herd of goats, the recovery of these goats is of no consequence. But the trial court has believed the recovery of goats against the accused.

The trial court has further proceeded to believe the recovery of torch from the witness Jodha Ram PW/9 Jodha Ram. According to Jodha Ram, the torch was given to him by the accused. No specific identification marks of the torch has been given by the prosecution and there is no reason as to why the accused would pick up the torch and given it to Jodha Ram, Thus, having believed the recovery of torch against the accused, the trial court has further committed an illegality. Then, the trial court has proceeded to observe that in the house, trunk etc were open and it

appears that theft has been attempted by the accused. This is a circumstance which does not stand corroborated from the police version. Nothing of that sort has been alleged in the First Information Report which show that the theft was attempted. Therefore, this circumstance too has been wrongly proved held against the accused.

Another circumstance which has been believed by the trial court against the accused is that one goat and dog has been found dead. The learned trial court has observed that may be that goad and dog had been making noise, therefore, the accused had killed them. Thus, the trial court has proceeded to observe that shirt of Ram chandra and shirt of Nanu Rm has been found to be stained with blood of human origin of B-group. According to the trial court, this is an incriminating circumstance because clothes of deceased has been found to be stained with blood of B-group. Another circumstance which the trial court has found to have established is the fact that clothes of the decease wife of Kishna Ram has been found to be stained with human semen. Therefore, according to the trial court, rape was committed on the wife of deceased Kishna Ram and this fact has been established against the accused person. But the trial court has missed an important relation in the matter that no human semen has been found in the vaginal swab of the deceased. If the rape was committed, the swab should have contained stains of human semen which has been explained by the trial court by saying that it might have been washed by rain. This is too remote a suggestion for the vaginal swab not being stained with human semen. Thus, this circumstance has also been wrongly believed by the trial court. Apart

from this circumstance, there is nothing to indicate that the accused in any way were involved in the crime. The circumstance held proved hardly make a chain to establish the crime as held proved against the accused persons.

Per contra, learned Public Prosecutor has submitted that circumstances were held proved by the trial court indicating that the accused wanted to outrage the modesty of the lady and steal away the articles which have been recovered from them. No explanation is coming forward and in that light, their complicity in the crime has been held proved by the trial court.

We have considered the rival submissions and have given our thoughtful consideration. The important recovery alleged to be from the accused persons is the recovery of watches. The identification of the watches is of doubtful nature. Learned Magistrate who conducted the identification parade has not categorically stated that similar watches were mixed and in that background, when two watches were to be identified, only three watches were put for identification. All this is enough to discredit the identification in its entirety but PW/3 knocks out the identification of the accused that he identified one watch. If he identified one then that watch is recovered which accused is not established. Therefore, the circumstance of recovery of watches is a circumstance which to our mind cannot be considered to have any bearing in against the accused.

Then comes the recovery of goats from the accused. The

recovery of goats is from a herd. Earlier those goats belonged to the herd. Why would the goats be stolen if they were to be sent to the herd. The reason given is contrary to the case because he wanted to have milk of the goat when he already had buffalo. In these circumstances, the recovery of goats also is hardly of an incriminating nature. Then comes the recovery of torch. No identification marks belonging to the deceased has been alleged to be found with the third person to whom the accused persons are alleged to have given. There cannot be a certainty about the identification of the torch and whey would the same be given to a third person if the accused had desired to steal the torch. In any case, recovery of torch also do not create any incriminating circumstance against the accused.

Then comes the presence of blood on the clothes of the accused of group B. According to FSL report, the clothes which have been found to be stained with blood is of blood group A,B. The blood group of the deceased Sadudi was of AB Group. If the deceased had the blood group AB and blood group B was found on the person of the accused, then it hardly connects the accused with the death of Sadudi alleged to have been ravaged by these accused. Therefore, in absence of the proof of the fact that what was the blood group of the accused who had injured on the person, it cannot be said that it was the blood group of the accused himself. In that light, the evidence of FSL is of no consequence. Further the presence of semen on the clothes of the accused and that of the deceased Sadudi cannot conclusively establish that rape was committed on her by the accused because the accused were adult male. Sadudi was a married lady.

They can have stains of semen on their clothes. Therefore, it cannot be said that rape was committed. In that view of the matter, the case made out against the accused persons as held proved by the trial court cannot be said to have been established beyond reasonable doubt. The circumstances as relied by the trial court are not sufficient in the ordinary course of nature to indicate conclusively that the accused were guilty of the charges levelled against them and in that light of the matter, we are persuaded to hold that chain of circumstances have not been completed to link the accused persons with the crime. It was a blind case where the accused have been implicated without sufficient evidence being there. Therefore, we feel that they are entitled to be given the benefit of doubt. The case as has been made out against the accused deserves to be held not proved. Accordingly, they are entitled to be acquitted of the charges leveled against them and consequently, their conviction and sentence deserve to be set aside.

In the result, the appeal is allowed. The conviction and sentence awarded to the accused appellants are set aside. They are behind the bars. They should be released forthwith, if not required in any other case.

(RAGHUVENDRA S. RATHORE), J. **(BHAGWATI PRASAD), J.**

bjsh

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. CRIMINAL APPEAL NO. 212/2003
(RAMCHANDRA & ANR. VS STATE)

O R D E R

DATE OF JUDGMENT : 31st July, 2007

HON'BLE MR. BHAGWATI PRASAD, J.
HON'BLE MR. RAGHUVENDRA S. RATHORE, J.

Mr. Varun Goyal for the appellants.
Mr. JPS Choudhary, P.P.

BY THE COURT :

Pronounced the judgment in Open Court.

The operative portion of the judgment reads as under :-

"In the result, the appeal is allowed. The conviction and sentence awarded to the accused appellants are set aside. They are behind the bars. They should be released forthwith, if not required in any other case."

(See separate judgment)

(RAGHUVENDRA S. RATHORE), J. (BHAGWATI PRASAD), J.

bjsh